

ST 03-3

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC, INC.,
Taxpayer**

No. 02-ST-0000

ID# 0000-0000

Sales Tax Exemption

Ted Sherrod

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General George Foster on behalf of the Illinois Department of Revenue; John Doe, Executive Director, on behalf of ABC, Inc..

Synopsis:

This matter is before this administrative tribunal pursuant to the protest of a Second Denial of Sales Tax Exemption issued by the Illinois Department of Revenue (“Department”) on May 10, 2002. ABC, Inc. (hereinafter “applicant”) applied to the Department for an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of use and related taxes as set forth in 35 ILCS 120/1g.

The issue to be determined at hearing is whether the applicant qualifies for an exemption identification number as “a corporation, society, association, foundation, or

institution organized and operated exclusively for charitable ... purposes [.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). After reviewing the evidence adduced at hearing, it is my recommendation that the Department’s Second Denial of Sales Tax Exemption be affirmed. In support of this determination I make the following findings of fact and conclusions of law.

Findings of Fact:

1. The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s Second Denial of Sales Tax Exemption dated May 10, 2002. Department Ex. 1.
2. Applicant has been in existence since 1985. According to its by-laws, the purpose of this organization is to work with neighborhood block clubs, churches, and other organizations to improve the quality of life for all residents, in a specific area of Anywhere, Illinois. Applicant’s “mission” statement states: “ABC, Inc. promotes and fosters an environment which allows the residents to solve the problems that affect their lives; through community organizing strategies; educational opportunities; leadership building; and encouraging residents to work towards empowerment.” Dept. Ex. 2, 3, 4.
3. The applicant’s by-laws provide for the governance of the applicant by an Executive Board composed of not more than 10 board members. The applicant’s members elect the Executive Board and the officers of the applicant. Dept. Ex. 2.
4. Under the applicant’s by-laws, the Executive Board is charged with the responsibility of carrying on the business of the applicant. Its primary responsibilities are to oversee the organization’s finances and to assure that the organization’s goals are

achieved. The applicant's Executive Board meets monthly. Ron Doe is the interim president of ABC, Inc. and, in this capacity, serves as the interim chairman of the Executive Board. Tr. pp. 3, 23; Dept. Ex. 2, 3.

5. The staff of the applicant is composed of an executive director, a community organizer, an administrative assistant and five volunteers. John Doe is the Executive Director of ABC, Inc.. Tr. pp. 3, 32; Dept. Ex. 3.
6. The applicant's by-laws provide, *inter alia*, that the applicant is organized for charitable purposes. These by-laws contain no provisions relating to stock or shareholders, or the payment of any dividends. Dept. Ex. 2.
7. The applicant attempts to enhance community empowerment and improve the quality of life by addressing neighborhood issues such as city services, crime and safety, youth activities and housing. These goals are pursued through training workshops, referrals to government agencies and other organizations, and by partnering with government agencies, other organizations and private banking institutions. The record does not indicate that the applicant provided food, shelter, or money to individuals. Tr. pp. 6, 7, 11, 12, 13, 14, 21, 22, 25, 32, 33, 34, 35, 38, 39, 47, 48; Dept. Ex. 4.
8. The applicant, in conjunction with community groups in other parts of Anywhere, including the Anywhere Coalition, and the Anywhere Organizing Project, conducts various housing issue related training workshops and educational programs. These are designed to educate homeowners about unfair lending practices, assist members in avoiding mortgage loan defaults and warn residents about unscrupulous lenders and lending practices. The applicant also assists residents with complaints about illegal lending practices and helps them obtain assistance with delinquent mortgage loans.

The applicant has received preliminary approval to act as a certified Housing Counseling Agency from the U.S. Department of Housing and Urban Development.

Tr. pp. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22; Taxpayer Ex. 1.

9. Membership in the applicant is limited to residents living in the vicinity of the West Anywhere neighborhood bounded Anywhere, Illinois. Applicant works in conjunction with other community organizations located outside of the West Anywhere vicinity. Tr. pp. 12, 13, 14, 33, 35, 36; Dept. Ex. 2, 4.
10. Persons desiring to vote for the applicant's Executive Board must pay a nominal membership fee of \$5 for an individual and \$7 for a family. Dues paying members are allowed to vote for the Executive Board and are given opportunities to serve in leadership capacities within the organization and work closely with the applicant's staff. The applicant currently has over 200 members. Tr. pp. 33, 34, 35; Dept. Ex. 2, 3.
11. Applicant advertises the availability of some of its housing related services through flyers, which are distributed on its behalf by an agency of the State of Illinois in the West Anywhere vicinity described above. Tr. pp. 13, 14.
12. Applicant encourages its members to participate in community political activities by sponsoring political forums and meetings. The applicant has also encouraged residents to become involved in community policing, and has worked on campaigns to prohibit alcoholic sales, improve government and banking services, increase school and neighborhood safety, improve local parks, change vehicle registration laws and lower tax assessments. Tr. pp. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51; Dept. Ex. 4.

Conclusions of Law:

The taxpayer seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes [.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). The issue in this case is whether the evidence presented by the applicant establishes that it qualifies for the exemption number it seeks.

The applicant bears the burden of proving by “clear and convincing” evidence, that this exemption applies. Evangelical Hospital Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991). Moreover, there is a presumption against exemption such that any doubts are to be resolved in favor of taxation. Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). The applicant’s burden of proof requires it to produce more than self-serving oral testimony in support of its claims. Brown Specialty Group v. Allphin, 75 Ill. App. 3d 845 (3d Dist. 1979). In order for the applicant to prevail, corroboration supporting testimony favoring the applicant should include documentary evidence. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990). In this case, such documentary evidence supporting the applicant’s claims might include membership lists, names and addresses of persons benefiting from the applicant’s services and the organization’s financial and other books and records.

The applicant’s by-laws provide, *inter alia*, that the applicant is organized for charitable purposes. Dept. Ex. 2. However, an organization is not relieved of the burden of proving it actually operates as a charity merely because its governing legal documents set forth that it is organized for a charitable purpose. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968).

In Methodist Old Peoples Home, *supra*, the Illinois Supreme Court set forth five factors to be considered in assessing whether an organization is actually an institution of public charity. To qualify, an organization should (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in its charter; (3) dispense charity to all who need and apply for it; (4) provide no gain or profit in a private sense to any person connected with it; and (5) appear to place no obstacles of any character in the way of those who need and would avail themselves of the charitable benefits its dispenses. Methodist Old Peoples Home at 157. These factors are not rigid requirements. Rather, they are guidelines to be considered with an overall focus on whether the institution serves the public interest and lessens the burdens of government. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1995). Moreover, an institution need not provide any direct financial assistance to individuals to qualify as a charity. In Methodist Old Peoples Home, the Supreme Court stated that “charity is a gift to be applied ... for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare – or in some way reducing the burdens of government.” Methodist Old Peoples Home at 156, 157. Accordingly, the law does not limit charity to the provision of financial assistance.

Applying these guidelines, I find that ABC, Inc. meets several of the criteria for determining whether it qualifies as a charity. One of the most important factors in determining if an organization constitutes a charity is that the benefits it provides serve the public interest or in some way reduce the burdens of government. *Id.* To promote

the general welfare, congress has enacted the National Housing Act, 12 **USCA** 1701 *et seq.* See 38 U.S. Op. Atty. Gen. 258. This Act authorizes the Secretary of Housing to contract with qualified non-profit organizations to assist in meeting the Act's mandates in various ways. 12 **USCA** 1701x. One such way in which this objective is achieved is through the retention of private, non-profit corporations that have demonstrated proficiency in counseling residents on housing issues. See instructions to "HUD-9900, Application for Approval as a Housing Counseling Agency" published by the U.S. Department of Housing and Urban Development ("HUD"). HUD has approved the applicant's preliminary application to be a HUD certified Housing Counseling Agency. Taxpayer Ex. 1. HUD's preliminary approval is evidence that the applicant is engaged in activities beneficial in achieving the objectives of the National Housing Act. These activities plainly serve the public interest.

The record also indicates that the applicant has no capital stock or shareholders. Dept. Ex. 2. Moreover, there is no provision in the organization's by-laws for the payment of dividends of any kind to members of the organization or others.

While the foregoing evidence clearly and convincingly supports the applicant's claims, the record before me is deficient in a number of critical respects. First, the applicant failed to provide any financial books or records of the organization. In the absence of such evidence, it is impossible to determine whether the applicant derives its funds "mainly from public and private charity." Methodist Old Peoples Home at 157. The record only contains anecdotal references to funding sources related to the organization's housing rehabilitation efforts commenced after the date of the applicant's application for exemption. Tr. pp. 28, 30, 31, 33. With respect to testimony concerning

funding by HUD (Tr. p. 14), the record is ambiguous since it contains no documentary evidence to support this claim. The only document from HUD in the record (Taxpayer Ex. 1) contains nothing pertaining to funding.

Moreover, there is no evidence in the record showing whether or not the applicant's activities "provide gain or profit in a private sense to any person connected with it." Methodist Old Peoples Home at 157. The record does not indicate whether, or how much the members of the Executive Board, or the organization's staff are paid for their services. The organization clearly would not qualify for exemption if it were determined that these salaries were so high that the organization's staff or executive board could be considered primary beneficiaries of the applicant's activities. Lutheran General Health Care v. Department of Revenue, 231 Ill. App. 3d 652, 661, 662 (1st Dist. 1992). The burden of proof is on the applicant to conclusively establish this fact by clear and convincing evidence in order to prevail. Evidence, in the form of the organization's financial books and records, should have been produced that would allow this tribunal to at least evaluate this consideration.

In sum, the record is sufficient for this tribunal to conclude that the applicant: (1) has no capital stock or stockholders and does not pay dividends to its members; and (2) engages in activities that promote the public welfare and serve the public interest. However, due to a critical failure of proof, this tribunal cannot establish whether the applicant derives funds from public and private charity. Methodist Old Peoples Home at 157. Nor has it been conclusively shown that the applicant's activities do not "provide gain or profit in a private sense to any person connected with it." *Id.* Since these are core attributes of any charitable enterprise, the exemption requested cannot be granted

absent the presentation of financial records and other documentary evidence addressing these issues.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's determination denying the applicant a sales tax identification number be affirmed.

Ted Sherrod
Administrative Law Judge

Date: February 10, 2003